

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRUCE MILES BENTON

Plaintiff,

v.

CLINGMAN,

Defendant.

Case No. 2:22-cv-02275-JDP (PC)

ORDER

On March 28, 2023, I screened plaintiff's complaint and notified him that it appeared to be barred by the statute of limitations since the claims as alleged appear to have accrued in 2014. The complaint also demonstrated that plaintiff was attempting to relitigate claims already litigated in another action in this district, which it seems he accidentally dismissed. *See* ECF No. 1 at 5-7; *Benton v. El Dorado Cnty. Sheriff's Dep't*, 2:15-cv-00772-TLN-AC ("15cv772"). I informed plaintiff that he cannot resume litigation of that previous case in this new case. I also granted him the opportunity to amend his complaint and to explain why it should proceed. ECF No. 11.

Instead of filing an amended complaint, plaintiff has filed four motions for extension of time, six motions for appointment of counsel, and the instant motion to stay this proceeding. *See*

ECF Nos. 12, 15, 16, 17, 18, 19, 20, 22, & 24. Plaintiff moves for a stay pending resolution of a motion he filed in 15-cv-772 seeking to re-open the case. *See* 15-cv-772 ECF No. 84.

Plaintiff's motion is denied. First, he has not demonstrated a need to stay this action. *See Clinton v. Jones*, 520 U.S. 681, 706-08 (1997) (A district court has "broad discretion to stay proceedings as an incident to its power to control its own docket, . . . [t]he proponent of a stay bears the burden of establishing its need"). As I previously attempted to explain to plaintiff, he cannot resume litigation of a closed case here. And second, plaintiff previously moved to vacate the order dismissing case 15-cv-772, and Judge Claire disregarded the filing and warned plaintiff that "no orders will issue in response to future filings." ECF No. 82. Thus, it appears plaintiff's recent filing in 15-cv-772 may not result in the issuance of an order by Judge Claire; this would seem to make a stay pending Judge Claire's ruling on his motion ill-advised.

I will afford plaintiff one final opportunity to amend his complaint. If plaintiff does not file an amended complaint within thirty days of this order's issuance, I will consider the non-filing a failure to comply with a court order and recommend that this case be dismissed.

Accordingly, it is hereby ORDERED that:

1. Plaintiff's motion to stay this proceeding, ECF No. 24, is denied.
2. Plaintiff is granted thirty days to file an amended complaint.
3. The Clerk of Court is directed to send plaintiff a § 1983 form complaint.
4. Failure to comply with this order may result in a recommendation of dismissal.

IT IS SO ORDERED.

Dated: September 11, 2023


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE